



DISCIPLINARY PROCESS FOR CIVILIANS

Directive 5 - 109

Date of Issue: July 2013 Amends/Cancel: Chapter V Sec 6

I. PURPOSE

The purpose of this Directive is to establish a written disciplinary process for civilian employees.

II. POLICY

- A. It is the policy of the Department of General Services Maryland Capitol Police (DGS-MCP) to impose discipline to correct inappropriate behavior.
- B. It is the policy of DGS-MCP to strive for consistency when applying discipline.

III. DEFINITION

- A. For the purpose of this Directive, civilian employee(s) refers to:
 - 1. Security Officers
 - 2. Police Communication Operators
 - 3. Civilian Administrative /Clerical Staff
 - 4. Civilian members of the Security Card Processing Center

IV. PROCEDURES

- A. Discipline may be imposed to address poor performance or behavioral/conduct-related problems. Keep in mind that a supervisor typically is not an appointing authority or appointing authority designee; therefore; when the supervisor believes that disciplinary action may be appropriate, the supervisor should make the appointing authority aware as soon after the infraction occurs as possible. There are very stringent timeframes that must be observed when imposing discipline.
- B. Within the State Personnel Management System (SPMS), there are six forms of disciplinary action:
 - 1. Written reprimand
 - 2. Forfeiture of accrued annual leave (a maximum of 15 days may be forfeited in a single action)
 - 3. Suspension without pay
 - 4. Denial of increment

5. Involuntary demotion
 6. Termination (with or without prejudice)
- C. Within the SPMS, we require adherence to the tenets of progressive discipline. Progressive discipline is a graduated range of responses to employee performance or conduct-related problems, which increase in severity for like infractions. Keep in mind, however, that the level of discipline should be proportional to the severity of the infraction; therefore, a more serious infraction may require that discipline begin at a higher level, even termination.
- D. Some infractions are so egregious that they are cause for automatic termination. These include, but are not limited to:
1. Intentional conduct, without justification, that seriously injures someone, causes substantial damage to property, or seriously threatens the safety of the workplace
 2. Theft of State property of a value greater than \$300.00
 3. Illegal sale, use or possession of drugs on the job
 4. Conviction of a controlled dangerous substance offense by an employee in a designated sensitive classification
 5. Conviction of a felony
 6. Wantonly careless conduct or unwarrantable excessive force in the treatment or care of an individual who is a client, patient, prisoner, or any other individual who is in the care or custody of this State.
- E. Before imposing discipline, an appointing authority must do several things:
1. In the case of poor performance, the appointing authority must investigate the employee's performance (including reviewing the employee's most recent performance appraisals) or, if the discipline is related to misconduct, investigate the alleged misconduct;
 2. For poor performance, notify the employee of the deficiency and provide an explanation of why it is an issue;
 3. Meet with the employee to consider the employee's explanation and/or mitigation;
 4. Determine the appropriate disciplinary action; and
 5. Give the employee a written notice of the action; and his/her appeal rights.

F. The Right to Union Representation

1. An employee who is the subject of an investigation, and who is also a member of a bargaining unit, may request union representative in any investigatory interview or meeting, and at any disciplinary hearing, discussion, conference or meeting (including settlement discussions) with the employee who is the subject of the disciplinary proceeding.
2. The employee must make the request for a union representative, and the union representative should be given reasonable notice to attend (see the applicable MOU for time frames) This right to representation extends only to the exclusive representative of that employee and only upon request by the employee, except that once an appeal of a disciplinary action is filed the employee filing the appeal may be represented by anyone, including a non-exclusive representative.

G. Time Limitations for Imposing Disciplinary Action

1. All disciplinary actions EXCEPT suspensions must be imposed within 30 calendar days after knowledge is gained about the performance problem or misconduct for which the disciplinary action is imposed
2. In the case of suspensions, the suspension must be imposed within 5 workdays following the close of the employee's next shift after knowledge is gained. An employee's leave days, weekends, and holidays are not counted.

H. Length of Suspension

Civilian employees of DGS-MCP may be suspended in increments of one day.

I. Discipline

Often, it simply feels wrong to a supervisor faced with poor performance to consider disciplining the poor performer; however, once the supervisor has had informal discussions with the employee, offered whatever remedial assistance and/or training that may be appropriate, orally counseled the employee, and ultimately, put pen to paper to counsel the employee in writing, typically, there is no other option if there is no improvement.

When discipline is imposed to address poor performance, the goal is to instruct the employee and provide the impetus for change. It is very important to remember that disciplinary action goes hand-in-hand with the performance evaluation process. This means that a persistently poor performer should not only be receiving coaching, counseling, and then ultimately discipline for the poor performance, but also should see that poor performance reflected on the employee's performance evaluation. Conversely, a persistently poor performer should not receive less than satisfactory performance ratings without having been disciplined for the poor performance.

J. Counseling

If a problem persists, the supervisor may wish to orally counsel the employee. Oral counseling is not disciplinary action.

K. How to orally counsel an employee:

The supervisor and employee meet with adequate time to devote to the discussion, in a quiet space where matters may be discussed confidentially. The supervisor recounts any previous discussions that were held and explains that this conversation is an “oral counseling session” and that the discussion will be documented as such – typically in a supervisor’s working file or log – these notes do not belong in an Official Personnel File.

The supervisor should engage the employee in a discussion of the potential problem (s), provide detailed advice on how to improve, and seek the employee’s cooperation in improving the behavior or performance to meet the supervisor’s stated expectations.

If the performance does not improve within a reasonable period of time, the supervisor may wish to consider issuing a written counseling memorandum. Written counseling is not a disciplinary action but is an official document that will be placed in the employee’s Official Personnel File.

A written counseling memorandum should clearly set forth the problematic performance and the expectations for improvement. It may be helpful to give concrete examples of the performance problems, along with suggestions for improvement.

An employee has the right to respond in writing to a written counseling memorandum. The document should provide the employee with notice about this right; specifically, an employee who receives a written counseling memorandum has the right to respond in writing within five calendar days of receipt of the document. The response should be attached to the counseling memorandum and placed with it in the employee’s Official Personnel File. Do not forget to notate on the document that a copy will be placed in the Official Personnel File.

L. Disciplinary Action Appeals

1. Employees who are disciplined have the right to file an appeal.
2. Appeals of disciplinary action must be filed with the head of the principal unit or designee, in writing, within 15 days after the employee receives notice of the disciplinary action with the head of the principal unit, typically the Secretary of the employing unit department, or the Secretary’s designee. An appeal should state, to the extent possible, the facts and law(s) that the employee believes would support the request to rescind the action.
3. The Secretary or designee may (but is not required to) confer with the employee before issuing a written decision, which must be issued 15 days after receiving the appeal (although the failure to respond by this deadline is considered a denial, from which an appeal may be made).

4. Within 10 days of receiving the decision (usually referred to as “Step 1” decision), the employee may appeal the decision to the designee of the Secretary of Budget and Management (DBM), the Employee Relations Division within the Office of Personnel Services and Benefits. Within 30 days of receiving the appeal, a settlement conference will be scheduled in the hope that a mutually satisfactory resolution may be reached. If not, the appeal may be forwarded to the Office of Administration Hearings (OAH) for a hearing.

At OAH, an administrative law judge (ALJ) will hear testimony and accept documentary evidence before rendering a decision on the appeal. The ALJ may uphold the action, rescind it, or modify it. The ALJ has the power to restore lost time, compensation, status or benefits or in the case of a termination, order reinstatement and/or full back pay and benefits.